



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 27, 1995

Mr. Dennis J. Eichelbaum  
Schwartz & Eichelbaum  
3700 Ross Avenue, Box 69  
Dallas, Texas 75204-5491

OR95-1146

Dear Mr. Eichelbaum:

On behalf of the Dallas Independent School District, you ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. You assert that the requested information is excepted from required public disclosure under sections 552.103 and 552.107 of the Government Code. We assigned your request ID# 31544.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) at 2 (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

We realize that the short time frame prescribed by section 552.301 may occasionally impose a substantial burden on governmental bodies seeking to comply with the Open Records Act. Accordingly, when we receive an otherwise timely request for an open records decision that lacks some information necessary for us to make a determination, it has been our policy to give the governmental body an opportunity to complete the request. On February 10, 1995, we asked you for copies of the records at issue and to submit your arguments for withholding the documents. To date we have not received the requested copies or your arguments.

The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974) at 5. Your request for an open records decision remains incomplete. Without the information requested from you, this office is unable to evaluate the exceptions you raised. Consequently, we find that you have not met your burden under sections 552.301 through 552.303 of the Government Code and that the information is presumed to be public.

In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. *See* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense); *but see also* Gov't Code § 552.353 (the failure to release public information is a criminal offense). We note that compelling reasons do not exist for withholding information merely because it is excepted from disclosure by either section 552.103 or section 552.107. *See* Open Records Decision Nos. 511 (1988) at 3 (observing that attorney for governmental body has discretion to decide whether predecessor to section 552.103(a) should be claimed), 630 (1994) (concluding that mere fact that information is within attorney-client privilege does not alone constitute a compelling reason to withhold information). If you have any questions regarding this matter, please contact our office.

Yours very truly,



Margaret A. Roll  
Assistant Attorney General  
Open Records Division

MAR/rho

Ref.: ID# 31544

cc: Mr. Don Venable  
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